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IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

C.R.NO. 30 /2005

Single Bench

APPLICANT
(TENANT)

R.R. No. 452/05
Presented by Shri. Bharat Rajput
dated 15.02.05

: Narendra Sharma
S/o Shiv Bhagvan Sharma,
Aged about 39 years,
R/o Kailash Nagar, Ranjandgaon
District-Ranjandgaon (CG).

Versus

NON-APPLICANT
(Land-lord)

R: Smt. Hansagouri
W/o Late Shri Gunwant Rai Jani,
Through Power of Attorney
Shri Mahesh Kumar
R/o Kamthi Line, Rajnandgaon
District-Rajnandgaon (CG).

CIVIL REVISION UNDER SECTION 23-E OF THE CHHATTISGARH
ACCOMMODATION ACT

3-1-2005

HIGH COURT OF CHHATTISGARH, BILASPURSingle Bench:- Hon'ble Shri Justice Dhirendra MishraCivil Revision No. 30 of 2005

Petitioner :- Narendra Sharma

Vs

Respondent :- Smt. Hansagouri
(Landlord)

Petitioner by Shri P. Diwakar, Sr. Advocate with Shri Anup Majumdar, Advocate.
Respondent by Shri B.P. Gupta, Advocate.

ORDER
(passed on 13/05/2005)

The petitioner/tenant has preferred this civil revision under Section 23-E of the Chhattisgarh Accommodation Control Act (hereinafter referred to as 'the Act') against the order of eviction dated 03.01.2005 passed in Case No. 09-A/90, year 2000, by the Rent Controlling Authority, Rajnandgaon.

2. Brief facts of the case are that the respondent/landlord filed an application under Section 23-A of the Act for eviction of the petitioner/tenant on the ground of bonafide necessity stating that the suit accommodation was given on a monthly rent of Rs. 2,700/- to the petitioner/tenant for a period of 11 months w.e.f. 10.12.1998 and the petitioner has not paid the rent from January 1999 to January 2000 amounting Rs. 32,400/-. It was stated in the application that she is a widow and the owner of the suit house and she bonafidely requires the above accommodation for opening of wholesale business and for that purpose she will do her business with the help of her son namely Mahesh Kumar Jani who had served registered notice to the petitioner which remained unreplied. It is also stated in the application that the respondent/landlord does not have any suitable non-residential vacant accommodation in the corporation area. This application dated 21.02.2000 was filed by the respondent/landlord through her son Mahesh Kumar Jani as being the power of attorney holder and along with

this application a general power of attorney executed by the respondent/landlord in favour of her son was also filed.

3. After filing of the above application, notice was issued for appearance of petitioner and he appeared before the Tribunal on 16.03.2000 through his counsel and the matter was posted for reply on 10.04.2004. However, the petitioner did not file his reply and filed an application under Order 6 Rule 5 of the C.P.C. on 12.05.2000 and on this date respondent/landlord also moved an application for ejectment of the petitioner. Thereafter, arguments were heard on both these applications on 27.02.2001 and the learned Tribunal vide order dated 09.04.2001 closed the right of the petitioner to defend and fixed the case for evidence of the respondent/landlord.
4. The petitioner preferred a revision under Section 23-C of the Act against the above order of closing his right to defend his case. This Court vide order dated 19.07.2001 passed in C.R.No. 456/01 directed that the proceedings before the trial Court may go on but no final order shall be passed. The evidence was recorded on 11.06.2001 but however the petitioner was not permitted to cross examine the witnesses of the respondent/landlord on the ground that the defence of the petitioner has been struck off. This Court vide order dated 12.02.2004 passed in C.R.No. 456/01 vacated the stay order granted earlier on the ground that arrears of rent has not been paid. After vacating of the stay order by the High Court, both the parties were given an opportunity of hearing for arguments and thereafter impugned order was passed on 03.01.2005 by the trial Court.
5. Learned counsel for the petitioner submits that though the defence of the present petitioner was struck off by the Tribunal even then, the respondent/landlord was required to prove that she needed the suit premises bonafidely. It is submitted that the respondent/landlord did not enter into the witness-box and in her place her son Mahesh Kumar Jani, the general power of attorney holder, was examined. Learned counsel for the petitioner argues that even the power of attorney filed by him, does not specifically authorize the power of attorney holder to prosecute the case. Relying upon the judgment of the Hon'ble Apex Court reported in AIR 2005 SC 439 in the matter of Janki Vashdeo Bhojwani and another Vs.

Indusind Bank Ltd and others submits that power of attorney does not authorize the power of attorney holder to depose in place and instead of principal. Thus, the landlord has failed to prove her bonafide need and learned Tribunal ought to have dismissed the above application on this ground also. It is further argued that the respondent/landlord has not filed any affidavit in support of the application preferred and further that from perusal of the impugned order it would be clear that learned Tribunal has not discussed the evidence available on record while allowing the application of the respondent/landlord for eviction of the petitioner.

6. On the other hand, learned counsel for the respondent/landlord submitted that even after service of notice of the proceedings, the petitioner did not seek permission within 15 days from the date of service of summons and as per provisions of Section 23-C of the Act, in default of obtaining leave to defend, the statement made by the landlord in the eviction application is to be deemed to be admitted by the tenant and the learned Tribunal was duty bound to pass eviction order against the tenant from the suit accommodation. Learned counsel for the respondent/landlord further submits that there is no ground available to the petitioner as provided under Section 23-E of the Act. Learned counsel for the landlord submits that as per provisions of Section 23-H of the Act, provisions of Section 13 of the Act is to apply "*mutatis mutandis*" in respect of an application for recovery of possession of accommodation under Section 23-A and in respect to proceedings for revision under Section 23-E of the Act also. It is also submitted that the petitioner has not paid the rent since January 1999 till date which has been admitted by the petitioner before this Court and therefore, as per provisions of Section 23-H of the Act, the petitioner cannot be permitted to prosecute the instant revision.

7. Learned counsel for the respondent/landlord submits that as far as objection of the petitioner that he did not examine Smt. Hansagouri, the landlord during proceedings and further objection that the holder of power of attorney cannot depose in place of principal are concerned, it is evident from the material available on records that the petitioner did not raise any objection on the above ground before the Tribunal, therefore, he was precluded from raising such objections and further that the judgment cited by the petitioner mentions that the holder of power of attorney cannot

depose on those facts which are in the exclusive knowledge of the principal whereas in the present case, the power of attorney holder is the son of the applicant with whose assistance the proposed business is to be run by the landlord. Relying upon the judgment of the Hon'ble Apex Court reported in AIR 2000 SC 3076 in the matter of J.Chatterjee Vs. Mohinder Kaur Uppal and another it is submitted that the legislative intent is clear that if an application for eviction of a tenant is filed by a widow for herself occupation, the Rent Controlling Authority should pass an order for eviction with utmost expedition. The purpose behind this enactment is to serve the social need to help a widow in getting possession of the premises required for her personal occupation. It is further submitted that the legislature has placed heavy burden on the tenant to satisfy the Rent Controlling Authority by filing an affidavit stating such facts which, if believed, will sufficiently prove that the plea of need of personal occupation by the petitioner/widow is nothing but a pretence and the leave as provided under Section 23-C of the Act is not granted and the order of eviction may be passed solely on the basis of averments of the landlord.

8. I have heard learned counsel for the parties and have gone through the records of both the Courts below and have also perused the impugned order.
9. So far as the contention of the petitioner/tenant that the respondent/landlord has failed to prove the bonafide necessity on the ground that she did not enter to witness box and the holder of power of attorney cannot depose in place of her is concerned, I am of the opinion that from a bare perusal of Section 23-C of the Act, it is clear that in the absence of application for leave to defend supported by an affidavit, Rent Controlling Authority is competent to pass an order of eviction of the tenant from the suit accommodation as the averments of the landlord in the application for eviction is to be deemed to be admitted by the tenant. Even otherwise, in the present case the alone son of the petitioner has been examined as a witness and even as per Section 23-D sub-section (3) of the Act, an application filed by a landlord under Sub-clause (a) or Clause (b) of Section 23-A, bonafide necessity of the landlord is to be presumed unless contrary is proved by the tenant. Thus, in the absence of any pleading or proof and in the absence of leave to defend, the

Tribunal could have passed an order of eviction only on the basis of the application of the landlord.

10. And further considering the submission of the respondent/landlord that the petitioner has not paid the rent from January 1999 till date and thus, he cannot be permitted to prosecute the revision proceedings before this Court as the provisions of Section 13 of the Act are applicable to the proceedings under Section 23-A of the Act as also the proceedings for revision under Section 23-E of the Act, I am of the opinion that the instant civil revision preferred by the petitioner under Section 23-E of the Act is devoid of merit and the same is liable for dismissal and accordingly, the revision is dismissed with costs.

Sd/-
Dhirendra Mishra
Judge

Khan